



R.C.S. No.95/2015
Thakubai Vs. Bhagirathibai & Ors.
CNR No. MHLA110007642018

ORDER PASSED BELOW EXH.NO.77

- 1) Perused the application submitted by the defendant No.12 for grant of permission to file the written statement by setting aside ex-parte order.
- 2) Perused the record. Record shows that defendant No.12 was duly served on 11/06/2015 but failed to appear and file his written statement. Hence ex-parte order was passed against him.
- 3) It is stated that, the defendant no.12 hasd undergone major surgery and the doctor had advised bed-rest. So he could not remain present before the court and file his written statement within prescribed time. The delay caused is not intentional or deliberate.
- 4) The plaintiff strongly opposed the application stating that the defendant was well aware of the order of ex-parte passed against him but deliberately avoided to file written statement only to prolong the case. So application be rejected with cost of Rs. 5000/-
- 5) It is well settled that the provisions of O-VIII R-1 of Code Of Civil Procedure are directory and not mandatory and it can be stretched in rare and exceptional cases. Defendant No.12 has filed this application along with his written statement on 05/11/2022.

6) The present suit is for partition and possession. The defendant Nos.12 came with his written statement on 05/11/2022. In the present case in hand, the period of limitation will start from 11/09/2015. There is delay of approximately seven years. If the opportunity is not granted to the defendant No.12 to protest the suit claim, irreparable loss will be caused to him. On the other hand no prejudice would be caused to the plaintiff, if written statement of defendant No.12 is taken on record. Enormous delay is caused by the defendant No. 12 for filing the written statement which needs to be condoned by imposing certain costs for the just decision of the case. Hence, following order is passed to meet the ends of justice.

ORDER

Application is granted subject to cost of

Rs.3000/- (In words Rs. Three Thousands only).

Place: Nilanga.
Date : 14/12/2022.

(Anand S. Munde)
Jt. Civil Judge, Sr. Division
Nilanga.